

Appl. No. 09/100,671
Preliminary Amendment

Attorney Docket No. 35207.13
Customer No. 27683

REMARKS

This Preliminary Amendment cancels Claims 48-69, but Applicants do so without prejudice, and reserve the right to present the subject matter of Claims 48-69 in a continuing application. This Amendment also adds Claims 70-92. Claims 1-47 were previously canceled. Thus, the claims now presented for examination are Claims 70-92. Applicants previously paid a filing fee for 38 total claims, including 4 independent claims. Claims 70-92 constitute a total of 23 claims, 2 of which are independent. Accordingly, no further fee should be due in association with the filing of this Preliminary Amendment. Applicants respectfully request that Claims 70-92 be considered on the merits.

Waiver of Remainder of Suspension of Action

As discussed earlier, Applicants filed a Request for Continued Examination (RCE), on or about May 21, 2004. The RCE request included the Patent Office fee for a suspension of action, in order to provide Applicants with time to file this Preliminary Amendment. Now that Applicants have filed this Preliminary Amendment, Applicants hereby expressly waive the remainder of the suspension period, and in particular request that the Examiner promptly proceed with examination of this application.

New Power of Attorney

As mentioned in the remarks of a prior Amendment filed on or about May 21, 2004, responsibility for this application has been transferred from the law firm of Hitt Gaines, P.C. to the law firm of Haynes and Boone L.L.P. The remarks of the prior amendment indicated that a new power of attorney would be submitted in due course. Accordingly, Applicants are now enclosing a "Revocation/New Power of Attorney by Assignee of Entire Interest Including Certification for Taking Action by Assignee Under 37 CFR 3.73(b)". It is respectfully requested that the PTO records be updated to reflect the new Power of Attorney.

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Comment Regarding Herz U.S. Patent No. 5,754,938

The most recent Office Action was issued on January 15, 2004, prior to filing of the RCE request. That Office Action rejected some claims under 35 U.S.C. §102, based on an assertion that they recited subject matter which was anticipated by Herz U.S. Patent No. 5,754,938. Further, that Office Action rejected some claims under 35 U.S.C. §103, based on an assertion that they would be obvious in view of Herz, when considered in combination with Gabber U.S. Patent No. 5,961,593.

As noted in the remarks of the Amendment filed on or about May 21, 2004, the Gabber patent was previously made of record in this application by the Examiner, but it does not appear that the Herz patent has ever been made of record in this application (unless the physical file recently transferred to the undersigned's law firm is incomplete in some respect). Accordingly, it appears that the §102 and §103 rejections in the Office Action of January 15, 2004 are technically invalid, because they are each based in whole or in part on art which is not of record. Consequently, it is not clear that Applicants are obligated to address the Herz patent in these remarks. Nevertheless, in an effort to expedite examination of this application, Applicants will present below some comments regarding why Claims 70-92 are distinct from Herz and Gabber.

Independent Claims 70 and 87

Independent Claim 70 is a newly-added method claim which includes a recitation of:

... configuring the financial information to include an identification of a financial institution which is different from the first user, to include an identifier for a pseudo credit account, and to include a pseudo expiration date for the pseudo credit account; and ...
transmitting payment from the financial institution to the second user on behalf of the first user under the pseudo credit account identifier ...

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Independent Claim 87 is a newly-added method claim which recites:

... establishing by the financial institution for the first entity a
pseudo credit account, an identifier for the pseudo credit account, and a
pseudo expiration date for the pseudo credit account; ...
transmitting of payment on behalf of the first entity from the
financial institution to the second entity under the pseudo credit account
identifier ...

Although Herz recognizes that a user may have a pseudo identity, Herz does not appear to teach a pseudo credit account that has an identifier and a pseudo expiration date. Gabber was relied on for the disclosure of a password, whereas Claims 48 and 59 do not recite passwords.

Dependent Claims

Claims 71-86 and Claims 88-92 respectively depend from Claim 70 and Claim 87, and are also believed to be distinct from the art of record, for example for the same reasons as Claims 70 and 87.

Conclusion

Based on the foregoing, it is respectfully submitted that all of the pending claims are fully allowable, and favorable reconsideration of this application is therefore respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647. Although Applicants believe that no fee is due in association with the filing of this Preliminary

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Amendment, the Commissioner is hereby authorized to charge any fee required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone LLP.

Respectfully submitted,



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Enclosure: Revocation/New Power of Attorney, with attachments

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